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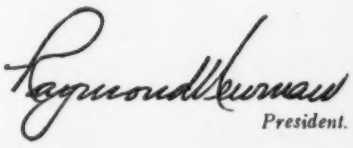
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

In applying the Delaware statute making directors, in office at a time when a corporation is in default in filing its annual report, ineligible for re-election under certain circumstances, the Chancellor has concluded that the directors would be eligible where the failure to file the reports occurred during receivership proceedings when the corporate records were not in the custody of the directors. (See page 415.)

Where the directors of a Delaware corporation had created a "permanent surplus fund," from which it was provided no future dividend was to be paid, and subsequently the directors declared a dividend payable from that fund, it was held that, while the action was irregular because contrary to a previous unrevoked resolution, the dividend was not regarded as void. (See page 414.)

An officer of a defendant corporation who is being examined as such, may not be compelled to testify as an officer of other corporations which are not defendants, under a recent ruling of the New York Supreme Court, Appellate Division. (See page 418.)



President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for June

What Constitutes Doing Business*

Fulfilling Contracts with the Federal Government

If a corporation is about to enter a state, in which it is not licensed to do business, in order to carry out the terms of a contract with the Federal Government, does its relations with the Federal Government thereby exempt it from the necessity of obtaining a license to do business or from the payment of other fees and taxes?

When this type of question was raised in Oregon, the Attorney General rendered the following opinion:

> "A foreign corporation engaged in the construction of postoffice buildings in this state, under contract with the Federal government, is not a direct instrumentality of the government, but is a contractor doing certain work for the government, presumably at a fixed compensation. In no sense is it the representative or agent of the government, nor an integral part of it; therefore it should qualify as a foreign corporation to transact business in this State."[1]

The Supreme Court of the United States has expressed the following view:

> "It seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."[2]

In *James v. Dravo Contracting Company*, 58 S. Ct. 208, the Supreme Court of the United States held that the West Virginia gross income tax was valid as applied to the gross income of contractors derived from activities within the state under government contracts. As to a contention that the tax was invalid on the ground that it laid a direct burden upon the Federal Government, the court observed that the respondent company was an independent contractor, and that the tax was not laid upon the Government, its property or officers or upon an instrumentality of the Government.

In two State of Washington cases, state taxes were held applicable to a corporation operating in a National Park under a contract with the Secretary of the Interior of the United States in conducting hotels and camps for park visitors. *Rainier National Park Co. v. Henneford et al.*, 45 P. 2d 617, certiorari denied 56 S. Ct. 307, and *Rainier National Park Co. v. Martin et al.*, 18 F. Supp. 481, affirmed 302 U. S. 661.

From the views expressed in these decisions and opinions, it would appear that a corporation having contracts with the Federal Government is not thereby exempted from qualification requirements or from the payment of annual state taxes and that such a corporation may be regarded as in much the same position with respect to liability to qualification and state taxation as other corporations.

[1] Opinion to Corporation Commissioner, June 10, 1932.
[2] *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375.

* *This is one of a series of articles on What Constitutes Doing Business. See page 430 for a list of pamphlets obtainable on this important subject.*

Domestic Corporations

Delaware.

Directors' resolution creating a "permanent surplus fund," from which no dividend was to be paid, held not to void subsequent declaration of dividend to be paid from such fund. This action was instituted by a Delaware corporation in a Federal court in Illinois to recover from defendants corporate funds which it was alleged had been withdrawn unlawfully and appropriated to the use of one of the defendants, its president. The transfers of funds were in the form of loans to the president and therefore in violation of the Delaware Corporation Act, Sec. 36, prohibiting corporate loans to officers. The action was concerned in part with the allowance, as credits against the loans, of certain bonuses granted to the president by corporate action. These bonuses were ruled by the lower court, under the evidence, to be transactions carried out solely for the purpose of creating such credits against the unlawful appropriation of the company's funds. The disallowance of the bonuses as such credits was affirmed by the Circuit Court of Appeals, Seventh Circuit. The lower court had also disallowed, as a credit against the loans, a dividend on stock of the president of the company credited to his account on December 31, 1930. The lower court refused to allow the dividend as a credit on the ground that it regarded the declaration of it as "ultra vires" of the corporation because it was unlawfully charged to the surplus account contrary to a previous resolution of the Board of Directors. It appears that the Board had, in 1924, by resolution transferred the balance of the corporate surplus fund to a "permanent surplus fund" for plant and plant equipment and as a safety fund "from which no dividend shall be paid." The Circuit Court of Appeals, however, ruled that the president was entitled to credit for the amount of the dividend, saying: "The creation of the 'permanent surplus fund' for the purposes enumerated was a question of policy entirely within the discretion of the Board of Directors and could have been nullified by formal action of the board at any time. The prohibition of payment of dividends from the 'permanent surplus fund' was discretionary with the Board, and the Board was not bound forever to refrain from charging dividends to such fund. The Board being under no legal duty to continue to build up the permanent surplus fund, or to refrain indefinitely from charging dividends to it, had the power to revoke either the augmentation provision or the prohibition against payment of dividends. Instead of striking out or amending the dividend provision, the Board merely declared a dividend and ordered it charged to the surplus fund. This action was contrary to the unrevoked previous resolution and to that extent was irregular. But such action was not void. A Board of Directors cannot increase or decrease corporate powers; and no action of a Board of Directors which the corporation has the power to perform through its directors can be ultra vires of the corporation merely because the board previously has declared by resolution that such

action will not be taken." *National Lock Co. v. Hogland et al.*, 101 F. 2d 576. Otis F. Glenn, R. G. Real and J. Roy Browning of Chicago, Ill., and Carl Solomonson of Rockford, Ill., for appellants. Floyd E. Thompson, Henry J. Brandt, Edgar Schoen and Charles Le Roy Brown of Chicago, Ill., and Karl C. Williams of Rockford, Ill., for appellee.

Directors held eligible for re-election where failure to file annual reports occurred during receivership proceedings, when corporate records were not in custody of directors. By statute (Sec. 97, Rev. Code of 1935) directors of a corporation who wilfully refuse to file the corporation's annual report, who are in office during the default "shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the corporation as director, or otherwise." Plaintiff stockholder challenged the election of defendant directors in defendant company. The Chancellor, however, found no reason to question the validity of their election under the statute mentioned under facts showing that a failure on the part of the corporation to file reports for three years prior to the election had, in no sense, been wilful but was entirely due to the peculiar circumstances then existing, which were: During the period of default, the corporation's property and books and records were in the custody of a receiver appointed by a Federal court, and that in the order appointing the receiver, defendants were restrained from interfering with any of the corporation's property. Further, shortly prior to the election, the corporation secured the records and proceeded to file the delinquent reports. Under such circumstances, the Chancellor ruled that the individual defendants were not ineligible for re-election. *Phoenix Finance Corporation v. Iowa-Wisconsin Bridge Company et al.*, Court of Chancery, New Castle County, April 12, 1939. Commerce Clearing House Court Decisions Requisition No. 214374. Arthur G. Logan of Marvel, Morford & Logan, for the petitioner. Daniel F. Wolcott of Ward & Gray, for the respondents.

President of company, through corporations controlled by him, deriving profits at the expense of his own company, held accountable to it. As stated in the May Corporation Journal, the Supreme Court of Delaware has affirmed the decree of the Chancellor in *Loft, Incorporated v. Guth et al.*, 2 A. 2d 225, (The Corporation Journal, November, 1938, page 246), in which it was held that the president of a Delaware company who, through corporations controlled by him, derived profits at the expense of his own company, was accountable to it. The opinion of the Supreme Court is concerned principally with the duties of an officer of a company with relation to business opportunities which present themselves while he is serving as such officer. The court expressed itself as follows: "It is true that when a business opportunity comes to a corporate officer or director in his individual capacity rather than in his official capacity, and the opportunity is one which, because of the nature of the enterprise, is not essential to his corporation, and is one in which it has no interest or

expectancy, the officer or director is entitled to treat the opportunity as his own, and the corporation has no interest in it, if, of course, the officer or director has not wrongfully embarked the corporation's resources therein." "On the other hand, it is equally true that, if there is presented to a corporate officer or director a business opportunity which the corporation is financially able to undertake, is from its nature, in the line of the corporation's business and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of his corporation, the law will not permit him to seize the opportunity for himself. And, if, in such circumstances, the interests of the corporation are betrayed, the corporation may elect to claim all of the benefits of the transaction for itself, and the law will impress a trust in favor of the corporation upon the property, interests and profits so acquired." Applying the latter rule to the facts before it, the court concluded: "Upon a consideration of all the facts and circumstances as disclosed we are convinced that the opportunity to acquire the Pepsi-Cola trademark and formula, goodwill and business belonged to the complainant, and that Guth, as its President, had no right to appropriate the opportunity to himself." The decree of the Chancellor impressing a trust upon property involved in the suit and requiring an accounting was therefore affirmed. *Guth et al. v. Loft, Incorporated*, Supreme Court of Delaware, April 11, 1939. Commerce Clearing House Court Decisions Requisition No. 214234; 5 A. 2d 503. Caleb S. Layton of Wilmington, and George Wharton Pepper of Philadelphia, Pa., (Richards, Layton & Finger, John Sailer, James A. Montgomery, Jr., Pepper, Bodine, Stokes & Schoch, of counsel), for appellants. Clarence A. Southerland of Wilmington, (David L. Podell and Hayes, Podell & Shulman, Levien, Singer & Neuburger, of counsel), for appellee.

Idaho.

Action, on judgment obtained against corporation prior to its forfeiture of charter, may be maintained against its trustees, even though there are no assets available for payment of corporate debts. Plaintiff had, in 1931, obtained a judgment against a corporation which, in 1932, forfeited its charter, for failure to pay its annual license tax. Plaintiff then instituted this action on the judgment against the company and the individual defendants as trustees of the company under the statutes, they having been directors of the corporation. The Supreme Court of Idaho affirmed a judgment for the plaintiff, finding that the action on the judgment had been instituted within the six-year period fixed by law within which such actions might be commenced. The court overruled a contention of the trustees that, in the absence of corporate property requiring administration, a cause of action could not be stated against the trustees, pointing out that the corporation had not been dissolved, nor had it otherwise passed out of existence, being merely in a state of suspended anima-

tion, subject to being revived and reinstated upon payment of the delinquent corporation taxes and concluded that "the fact that a debtor has no assets available, from which his debt may be paid, is not a defense to an action by his creditor on a money judgment against him." *Caxton Printers, Limited v. Ulen et al.*, 86 P. 2d 468. J. H. Felton of Moscow, for appellants. S. Ben Dunlap, of Caldwell, for respondent.

Massachusetts

Where first two words of two corporate names were identical, court upholds finding to effect that person of average intelligence would not be misled or readily confused concerning them. Under a statute providing that one corporation shall not assume the name of another corporation or a name so similar as to be likely to be mistaken for it, (G. L., C. 155, sec. 9), the Supreme Judicial Court of Massachusetts has affirmed a finding that that "National Shoe Corporation" was not entitled to relief under the statute against a corporation with the name of "National Shoe Manufacturing Co., Inc." "It is true," said the court, "that in the present case the first two words of each corporate name are identical. It is also true that there is nothing peculiar or distinctive in the words 'National Shoe.' The difference between the two names in the case at bar, taken in their entirety, is such that a finding is not to be disturbed to the effect that a person of average intelligence would not be misled or readily confused." *National Shoe Corporation v. National Shoe Mfg. Co., Inc.*, 19 N. E. 2d 734. Maurice Tobey and Allen A. Tepper of Boston, for appellant. Douglas Whitcomb of Worcester, for appellee.

Missouri.

Suit in tort against Home Owners' Loan Corporation dismissed as being action against the United States Government, which had not consented to suit. In an action brought against the Home Owners' Loan Corporation as owner of premises in which plaintiff received injuries because of the defective condition of a stairway, the District Court, E. D. Missouri, E. D., sustained a motion to dismiss the suit. It based its ruling upon the fact that a judgment, if satisfied, would be paid by the United States, and therefore the action was in reality an action against the Government, which had not consented to be responsible for the torts of its agents. *Schevitzky v. Home Owners' Loan Corporation et al.*, 26 F. Supp. 311. Lee J. Placio of St. Louis, for plaintiff. Kenneth Teasdale, and Redick O'Bryan, State Counsel, of St. Louis, for defendant Home Owners' Loan Corporation. (*Note: The conclusion reached is contrary to that of the New York Supreme Court under similar facts in Gillen v. Home Owners' Loan Corporation*, 8 N. Y. S. 2d 945, *The Corporation Journal, March, 1939, page 344, where suit was allowed, as it was regarded as being based on activities involving no particular governmental function.)*

New Jersey.

Officers of corporation which had been dissolved for failure to pay franchise taxes, held individually liable for purchase they made in the corporation's name after the forfeiture. After the charter of a corporation, of which defendants were officers, had been declared void for its failure to pay its franchise taxes, the defendants continued the corporate business in its name and purchased certain goods from the plaintiff. Suit to recover the purchase price was brought against the defendants individually. A judgment of nonsuit in the lower court was reversed by the Supreme Court of New Jersey, which upheld the personal liability of the defendants who had held themselves out as agents for a principal which was no longer existent. The ignorance of the defendants that the corporation had been dissolved was ruled not to affect their liability. *Studerus Oil Co. v. Bienfang et al.*, 4 A. 2d 787. Sher & Sher (Sydney Sher, of counsel), of Rutherford, for appellant.

New York.

Officer of defendant corporations in a derivative stockholder's action, being examined as such, may not be compelled to testify as an officer of other corporations not defendants. In a derivative stockholder's action, a witness who was not a defendant was adjudged in contempt while being examined, as secretary and treasurer of the two corporate defendants, for failure to produce the books and records of two corporations not parties to the action and all the books and papers of one of the defendant corporations, in order that plaintiffs' attorney could inspect them all and embark upon what he himself called "a fishing excursion." The Appellate Division, First Department, relieved the witness of the contempt charge and fines imposed, observing that the examination, which had been granted under section 296 of the Civil Practice Act, was a limited examination and not a discovery and inspection such as is allowed under section 324. "The officer of the defendants who was being examined can be examined only in his capacity as such officer" remarked the court, "and, under the order in question, may not be compelled to testify as an officer of other corporations not defendants." *DeVan et al. v. Tobacco Products Corporation of Delaware et al.*, CCH CDR No. 211924; 10 N. Y. S. 2d 325. John C. Bruton, Jr., of counsel (Inzer B. Wyatt with him on the brief; Sullivan & Cromwell, attorneys) for appellants. Meyer Kraushaar for respondent Howard G. DeVan. Brandfon, Freeman & Blei for respondent Joseph Fisch.

Foreign Corporations

Massachusetts.

Final decree entered in suit in which Massachusetts court took jurisdiction of controversy involving the internal affairs of a Maine corporation. The Supreme Judicial Court of Massachusetts has

ordered the entry of a final decree in the case of *Lydia E. Pinkham Medicine Co. v. Gove et al.*, 9 N. E. 2d 573, (The Corporation Journal, November, 1937, page 39), in which that Massachusetts court took jurisdiction of a suit involving the affairs of a Maine corporation having its principal place of business in Massachusetts, where all of the defendants were alleged to be residents of Massachusetts. *Lydia E. Pinkham Medicine Company v. Gove et al.*, Supreme Judicial Court of Massachusetts, April 12, 1939. CCH Court Decisions Requisition No. 215273; Mass. Advance Sheets (1939) 603; 20 N. E. 2d 482. J. W. Worthen (E. R. Cook, with him,) for the plaintiff. L. Withington (J. S. McCann, with him,) for the defendants.

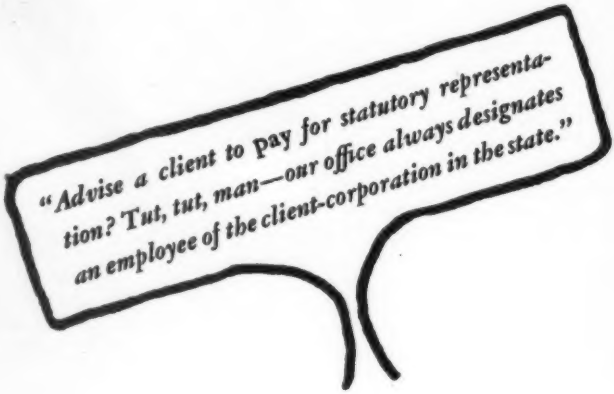
Michigan.

Failure to file corrected annual report until eight months after original report was rejected held not to be a substantial compliance with statute providing for suspension of corporate powers where report is not filed on time. The Michigan statutes provide for a suspension of corporate powers if the annual report is not filed and the privilege tax paid during July or August or within ten days thereafter. Plaintiff Ohio corporation's secretary had personally presented the corporation's report in August, 1937, to the Michigan Corporation and Securities Commission, which informed him that certain changes were required to be made in the report and it was suggested he bring it back at his earliest convenience. Eight months later, at a time when the report had not yet been returned, the corporation commenced this action on a contract with defendant entered into in April, 1938. Two days after commencing suit, plaintiff filed its corrected annual report. Defendant moved to dismiss the action on the ground that plaintiff's corporate powers had been suspended. The Supreme Court of Michigan affirmed an order of dismissal by the lower court, reaching the conclusion that plaintiff's late filing of the corrected report could not be regarded as a "substantial compliance" with the statute or that there had been an "innocent mistake" on the part of the plaintiff. *Newburgh Steel Co. v. Auto Steel Co.*,* 284 N. W. 682. Jacob F. Schulman and Alfred A. May (Joseph Burston, of counsel) of Detroit, for appellant, Beckenstein, Wisok & Maguire of Detroit, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Michigan volume, page 801.

Pennsylvania.

Where attachment of shares of Delaware and Virginia corporations, represented by certificates pledged within Pennsylvania, was sought, situs of Delaware corporation's shares was held to be in Delaware, while situs of Virginia corporations' shares was held to be in Pennsylvania, thus subjecting the latter shares to attachment. The plaintiff, having secured a judgment against defendant, issued an attachment execution summoning a bank as garnishee, inasmuch


"Advise a client to pay for statutory representation? Tut, tut, man—our office always designates an employee of the client-corporation in the state."


"We used to do that. No more, though. Too many transfers of employees, promotions, dismissals, resignations, vacations, deaths. When we got the facts we found it actually the most uneconomic type of statutory representation. Nowadays we advise every client to designate C T Representation in every state in which it qualifies."

as defendant had assigned certificates in Virginia and Delaware corporations to the bank as collateral security for defendant's demand note. "The sole question for our determination," observed the Pennsylvania Supreme Court, "is whether defendant's interest in shares of Virginia and Delaware corporations, assigned and delivered by him to the garnishee bank as collateral security for a note still unpaid, can be the subject of attachment execution in this state." The court, in ruling that "the certificate in the Virginia corporation is liable to attachment, the requirement of seizure having been met, and hence it can be sold subject to the rights and interest of the pledgees," but that "the certificates of stock in the Delaware corporations are not subject to levy, and therefore the pledgor's equity of redemption in such shares cannot be reached," based its judgment upon the fact that both Virginia and Pennsylvania had adopted the provisions of the Uniform Stock Transfer Act, while Delaware had not. "The main purpose of the uniform act," said the court, "is to make certificates of stock as far as possible the sole representative of the shares which they represent." The statute was therefore viewed as permitting the attachment of shares of foreign corporations whose situs could be regarded as being in Pennsylvania by virtue of the presence of the certificate which represents the shares. In Delaware, however, it was provided by statute that for purposes of title, attachment and garnishment, but not for the purpose of taxation, the situs of the ownership of the capital stock of all Delaware corporations "shall be regarded as in this State." As this provision was inconsistent with the Pennsylvania statute, it was allowed to prevail. *Mills v. Jacobs; Citizens Bank of Parsons, Garnishee,* Pennsylvania Supreme Court, January 26, 1939. Commerce Clearing House Court Decisions Requisition No. 209243; 4 A. 2d 152.

Taxation

Canada.

Corporation which formed a "paper partnership," composed of its stockholders, and sold its entire output through the partnership, held liable for the sales tax as based on sales prices of the partnership to the public, rather than on lower prices at which corporation sold to the partnership. Defendant corporation, a manufacturer of rice and bags, formed a partnership which consisted of shareholders of the company, and sold its output to the partnership at prices above the cost of production but at a price below the wholesale prices current at the time of sale. This action was brought against the corporation to recover the sales tax under the Special War Revenue Act from it, together with penalty, for a period of three years and six months, based upon the selling prices of the partnership. The corporation, however, contended that the tax should be assessed on its own selling prices to the partnership. The Exchecquer Court of Canada, after an examination of the circumstances surrounding the formation of the partnership, finding that it was merely a "paper

partnership," the organization of which had brought about no real change in the business set-up of the corporation, and that the partnership was formed for the purpose of attempting to reduce the sales tax due, ruled that the tax should be calculated against the corporation on the basis of the selling prices of the partnership. *The King ex rel. A.-G. Can. v. Canada Rice Mills Ltd.*, (1939) 2 D. L. R. 45. C. L. McAlpine, K. C., and J. R. Tolmie, for plaintiff. W. Martin Griffin, K. C., for defendant. *(An appeal in this case has been dismissed by the Supreme Court of Canada.)*

Kentucky.

Kentucky Chain Store Tax held invalid by the Kentucky Court of Appeals. The Chain Store Tax as imposed by chapter 26 of the Extraordinary Session of 1934, as amended in 1936, was graduated according to the number of stores in Kentucky as follows: one store, $2; two to five stores, $2, plus $25 for each store in excess of one; six to ten stores, $102, plus $50 for each store in excess of five; eleven to twenty stores, $352, plus $100 for each store in excess of ten; twenty-one to fifty stores, $1,352, plus $200 for each store in excess of twenty, and on chains of more than fifty stores, $7,352, plus $300 for each store in excess of fifty. The appellant company, owning and operating 200 stores in Kentucky, contended the law was invalid "as being an unreasonable and arbitrary classification of those engaged in the trade or occupation of a merchant for the purpose of taxation." Other grounds were also urged, but it was upon this ground that the Kentucky Court of Appeals based its conclusion invalidating the tax. Referring to section 171 of the Kentucky Constitution, requiring taxes to be equal and uniform, the court said: "The uniformity provision does not prevent the classification of businesses, trades, professions or occupations, and the taxation of different classes at different rates, but the tax must be uniform on all subjects within the class to which it is applied, and the classification must be made according to natural and well-recognized lines of distinction." "The record before us does not disclose any substantial difference between the business conducted by a person owning one store and one owning two or more stores," continued the court. It concluded that the classification provided in the act was not a natural one but was one which was unreasonable and arbitrary. *The Great Atlantic & Pacific Tea Co. v. Kentucky Tax Commission et al.*,* Kentucky Court of Appeals, March 21, 1939. Commerce Clearing House Court Decisions Requisition No. 212682.

* The full text of this opinion is printed in **The Corporation Tax Service**, Kentucky volume, page 4806.

New York.

Transfer of stock in company organized under a reorganization plan approved by Federal court, to voting trustees, followed by issuance of voting trust certificates to bondholders of company being

reorganized, held not to be a transfer subject to stock transfer tax. Claimant corporation was the successor of a corporation reorganized under section 77B of the Federal Bankruptcy Act. As part of the reorganization, the United States District Court for the Western District of New York approved a plan whereby the preferred stock of claimant was to be issued to five voting trustees who would issue voting trust certificates to the bondholders of the reorganized company. A certificate for 35,000 shares of the preferred stock of claimant was accordingly issued to the voting trustees. The Tax Commission required stock transfer tax stamps to the value of $1,050 to be used in connection with the transaction. Payment therefor was protested by claimant and its application for refund denied by the Commission. Claim for refund was thereupon made in the Court of Claims of New York. That court remarked that "it is recognized that a transfer 'by operation of law' is not a taxable transfer." It regarded the receipt of the stock and the granting of the beneficial interest to the bondholders as a single transaction which occurred "by operation of law," inasmuch as it was effected by order of the United States District Court under a reorganization plan approved by it. The court concluded that the claimant company "had no beneficial interest in the stock it issued; it was merely a conduit through which the reorganization scheme could be effected; all of the acts in the case at bar relating to the transfer of stock were involuntary, under court order—that is—'by operation of law.'" A recovery of the payment made was therefore allowed. *Terminals & Transportation Corporation v. State,** 8 N. Y. S. 2d 282. Dudley, Stowe & Sawyer (Horace C. Winch, of counsel) of Buffalo, for claimant. John J. Bennett, Jr., Atty. Gen., (Joseph I. Butler and John M. Dooley, Deputies Atty. Gen., of counsel), for the State.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 4521.

A real estate corporation which changed the nature of its business so as to be classified as a business corporation after November 1 and before the January 1 following, held relieved of taxation as a real estate corporation for the year beginning January 1 after the change of classification. For many years prior to 1930, the activities of the petitioner company brought it within the classification of a real estate company as defined by section 182 of the Tax Law, and it was taxed as such. It continued to have that character until November 22, 1930, when it purchased a large quantity of stock of an investment company, which it thereafter held for business purposes. The company thereupon ceased to be taxable as a real estate company for franchise tax purposes, as it was no longer "wholly engaged in the purchase and sale of, and holding title to, real estate for itself" and it became taxable for franchise tax purposes as a business corporation as defined by section 209. The tax commission, however, taxed the company for the year 1931 as a real estate company, although the company had not been a corporation of that type at any time during 1931. The petitioner sought to have the tax annulled.

The New York Supreme Court, Appellate Division, Third Department, ordered this to be done, upon reaching a conclusion that the franchise tax in dispute was not assessable by the tax commission against the petitioner in 1931, saying: "At the time the tax in question was levied on January 1, 1931, the petitioner was not a 'real estate' corporation by the very terms of section 182, nor was it such at any time during that year. As soon as the petitioner bought and held property other than real estate for itself, on November 22, 1930, *ipso facto* it became a 'business' corporation, and was never anything else thereafter. It did not require an adjudication of the court, nor other legal proceeding, to effect that result. The conceded facts and the statute themselves determined it. *Unum Real Estate Corporation v. Graves et al.*,* 10 N. Y. S. 2d 846. Commerce Clearing House Court Decisions Requisition No. 212130. Root, Clark, Buckner & Ballentine (George E. Cleary and Robert G. Surridge, of counsel), of New York City, for petitioner. John J. Bennett, Jr., Atty. Gen., (Wendell P. Brown, Asst. Atty. Gen., of counsel), for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 1130.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

NEW JERSEY. Docket No. 449. *Newark Fire Insurance Company v. State Board of Tax Appeals and the City of Newark*, 193 Atl. 912. (The Corporation Journal, January, 1939, page 302.) State Taxation —tax on intangible personal property of a domestic insurance company. **Appeal filed, October 31, 1938. Further consideration of the question of jurisdiction postponed to the hearing on the merits, November 21, 1938. Motion of Sun Oil Company for leave to file brief as amicus curiae submitted and the motion denied, March 27, 1939. Argument commenced, April 18, 1939. Argument concluded, April 19, 1939.**

TEXAS. Docket No. 748. *Ford Motor Company v. Edward Clark, Secretary of the State of Texas et al.*, 100 F. 2d 515. (The Corporation Journal, April, 1939, page 376.) State annual franchise tax on corporations—basis of tax. **Petition for certiorari filed, March 15, 1939. Petition granted, April 3, 1939. Motion to substitute Tom L. Beauchamp, present Secretary of State, and Gerald Mann, present Attorney General, as parties respondent in place of Edward Clark and William McCraw, respectively, granted, May 1, 1939.**

* Data compiled from CCH **U. S. Supreme Court Service, 1938-1939.**

Regulations and Rulings

CALIFORNIA—The State Board of Equalization has ruled that the retail sales tax applies to receipts from sales of tangible personal property to the United States Government, and that sales to such departments as the Treasury, Interior, Agriculture, War, Navy and Post Office are sales to the United States Government. (California Corporation Tax (CT) Service, ¶ 64-082.)

FEDERAL—A recent Federal Income Tax ruling is to the effect that the mere renting of an office in the United States by a corporation foreign to the United States, and the installation therein of an assistant secretary to collect dividends and interest from securities purchased through resident brokers, and being held by local banks, as custodians, do not constitute doing business in the United States under the 1936 Act. (I. T. 3260, 1939-10-9743 (p. 6).) (Standard Federal Tax Service —1939—¶ 6174.)

IDAHO—The Attorney General has advised the Commissioner of Income Tax that a taxpayer is entitled to a refund of the income tax if the claim for refund is filed within the two year period from the time the final tax instalment is paid. (Idaho CT, ¶ 1530.) It is also the opinion of the Attorney General that no statute of limitations applies to the remedy of distraint for personal property taxes. (Idaho CT, ¶ 2456.) In an opinion to the Department of Finance, the Attorney General has ruled that a company maintaining a warehouse as a source of supply for its stores located in Idaho, which does not sell any of its goods, wares or merchandise, either at retail or wholesale from such warehouse, is not required to secure a license to operate such warehouse under the provisions of the Chain Store Tax Law. (Idaho CT, ¶ 7889.)

KENTUCKY—The Commissioner of Revenue has expressed the view that United States Savings Certificates are subject to property tax under the intangible tax law of the Commonwealth. (Kentucky CT, ¶ 24-036.)

MINNESOTA—A complete revision of the Income Tax Regulations has recently been released by the Minnesota Tax Commission. (Minnesota CT, pages 1375 to 1450.)

NEW MEXICO—A foreign corporation which sells merchandise as interstate shipments and which desires full protection on chattel mortgages filed in the state and on open accounts from creditors in the state, should file a copy of its charter, statement, etc., in order to qualify and maintain action on contracts made by it in the state. (Opinion, Attorney General to the State Corporation Commission, New Mexico CT, ¶ .404.)

VIRGINIA—The State Tax Commissioner has ruled that contributions by employers under the Federal Social Security Act are excise taxes and are, therefore, deductible as taxes under the Virginia income tax law, and that, likewise, the taxes imposed by the States on employers for unemployment compensation are excise taxes. (Virginia CT, ¶ 1517.)

Some Important Matters for June, July, August, September and October

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Franchise Tax based on net income. Second instalment due on or before September 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

List of non-resident employees due on or before July 25.—Domestic and Foreign Corporations.

IOWA—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

IOWA—Continued

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

KENTUCKY—List of Resident Stockholders and Bondholders due on or before August 1.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

MARYLAND—Annual Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second Instalment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July and August.—Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

Annual Report and Fee due during July.—Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due in August.—Domestic Corporations.

Franchise Tax Return and Tax due on or before August 15.—Foreign Corporations.

NORTH CAROLINA—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1; delinquent after July 15.—Domestic and Foreign Corporations.

Semi-Annual Report to Department of Labor due in October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Fee and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Instalments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Capital Stock Tax Return and Payment due on or before July 31.—Domestic and Foreign Corporations.

UTAH—Annual Report to the Industrial Commission due in July.—Domestic and Foreign Corporations employing 3 or more persons in Utah.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

Quarterly Gross Sales Tax Returns and Payments due on or before July 30 and October 30.—Domestic and Foreign Corporations.

WISCONSIN—Second instalment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.